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March 2, 2004

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VIA HAND DELIVERY

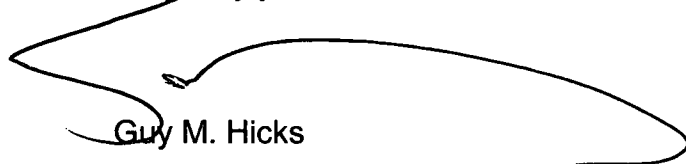
Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Tariff to Reclassify Rate Grouping of Certain BellSouth Exchanges*
Docket No. 04-00015

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Motion for Summary Judgment*. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Tariff to Reclassify Rate Grouping of Certain BellSouth Exchanges*

Docket No. 04-00015

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR SUMMARY JUDGMENT

BellSouth Telecommunications, Inc. ("BellSouth") files this *Motion for Summary Judgment* and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

INTRODUCTION

This matter does not turn on issues of disputed material fact relevant to the tariff. Rather, the Consumer Advocate Division ("Consumer Advocate" or "CAD") raised solely legal issues in its *Complaint*.

DISCUSSION OF AUTHORITY

I. **THE SOLE LEGAL ISSUE PRESENTED IN THIS MATTER IS WHETHER BELLSOUTH'S TARIFF CONSTITUTES A RATE INCREASE COVERED BY T.C.A. 65-5-209(f), AND THE ANSWER IS "NO."**

A. **The Tariff Does Not Alter Any Of The Rates In BellSouth's Approved Price Regulation Plan.**

Conforming customers into their proper rate classification in accordance with the A3.4 tariff is not a rate increase. Nothing in the price regulation statute or plan even addresses the rate group concept generally, nor does it relate to BellSouth's revision of the tariff to provide internal consistency regarding the definition of these rate groups. Certainly, there is nothing in the price regulation statute suggesting that the General

Assembly intended to do away with rate groups or the A3.4 tariff when it enacted the price regulation statute. Nor is there anything in the Authority approved BellSouth price regulation plan suggesting that the Authority intended to do away with the A3.4 tariff or rate groups. The CAD's claim that the price regulation statute somehow prohibits rate grouping fails as a matter of law.

The A3.4 tariff is straightforward. It requires that:

A.3.4 Regrouping

When the number of main station lines and private branch exchange trunks in the local service area of an exchange increases or decreases to the extent that such exchange moves into a different rate group, the Company shall file a revised tariff in accordance with the statutory provisions and the rules and regulations of the Commission, making effective the rates for the appropriate higher or lower group after a waiting period of six months from the last day of the month in which the exchange moved into the different group.

In Tennessee, as in most jurisdictions, tariffs have the force of law. The A3.4 tariff was approved by the appropriate regulatory agency (the Public Service Commission), and as the Court of Appeals has stated,

[t]he published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law.

GBM Communications, Inc. v. United Inter-Mountain Tel. Co., 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) (emphasis added).

The BellSouth tariff simply corrects rate groups, such that all locations meeting the rate group definitions, as set out in the existing tariff, are included in the correct rate groups. This correction is necessary because the A3.4 tariff defines rate groups based on the number of locations that can be dialed as a local call. Due to development in some areas during the recent years, this local calling ability has changed. As a result of

those changes, some areas no longer fit within the rate group classification in which they are currently assigned.

Rather than being analogous to a rate change, this situation is in fact analogous to the situation in which a customer physically moves from one location to another. If the customer's new location did not meet the definition of the former rate group, then the rate would be applied to that customer consistent with the new rate group to which he now belonged. Obviously, price regulation does not apply to such a situation, and no headroom would be required to make this change. Likewise, customers affected by the regrouping are customers whose geographic location no longer is consistent with the rate group in which they were formerly included. In neither scenario has a rate increase occurred. Instead, facts have changed, and, as a result, a different (but previously existing) rate should be applied to that customer in accordance with the A3.4 tariff.

B. Rates That Will Be Charged To Customers Under BellSouth's Revised Tariff Have Already Been Determined To Be Just And Affordable.

The CAD attempts to argue that BellSouth's tariff establishes a rate which is not permitted under price regulation. BellSouth's tariff, however, provides that customers will be charged the applicable rate already established for rate groups in Tennessee. These rates were specifically determined to be just and affordable pursuant to both the Court of Appeals' decision and the TRA's approval of BellSouth's price regulation plan. Consequently, all customers who obtain service pursuant to the tariff will pay rates that have already been determined to be just and affordable under Tennessee law. The CAD's own *Petition*, at paragraph 13, recognizes this, noting that

[u]tilizing the procedures outlined in this statute, the TRA established just, reasonable and affordable initial rates when the agency approved

BellSouth's application for a price regulation plan. See *Price Regulation Order* at pp. 18, 20-22; see also, Tenn. Code Ann. §§ 65-5-209(a) and 65-5-209(c) (Supp. 2003): *BellSouth Telecomm. Inc. v. Greer*, 972 S.W.2d 663, 674-675 (Tenn. Ct. App. 1997).

II. **AS A MATTER OF LAW, FAILURE TO INCLUDE ALL AREAS MEETING THE DEFINITION OF A RATE GROUP IN SUCH RATE GROUPS RESULTS IN AN IRRATIONAL DISTINCTION BETWEEN CUSTOMERS.**

The rate group designations are based upon the number of locations that can be dialed locally from a given location. Over time, some ratepayers have been retained in rate groups even though their locations no longer meet the rate group definition. Accordingly, these rate payers are being grouped with other ratepayers in a manner that is arbitrary and inconsistent with the A3.4 tariff.

Perhaps some fact could be articulated to create a post-hoc rationalization for this disparate treatment, but it is clear from the language of the A3.4 tariff that the assignment of rate groups was intended to be based upon the ability to call a certain number of locations as a local call. That was the intent and the stated basis for the rate groups when the rate groups were established and when the price regulation plan was approved. Given the development of these areas, that distinction is no longer consistent with the rate groups without the re-grouping accomplished by BellSouth's tariff.

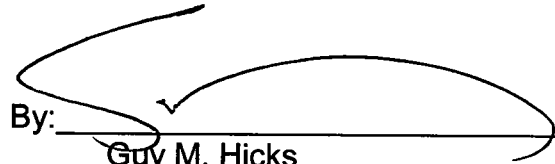
In essence, the number of areas that could be called as a local call was the concept on which the current tariff is based. The regrouping tariff merely maintains this same basis, in accordance with the A3.4 tariff.

CONCLUSION

For the reasons set forth above, BellSouth respectfully urges the TRA to reject the *Complaint* of the CAD and to approve the tariff.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

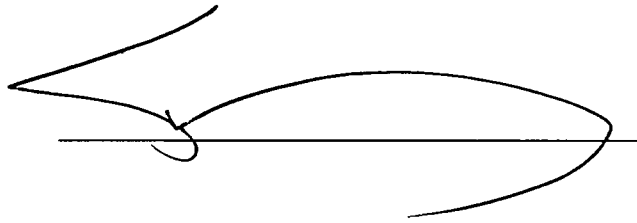
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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2004, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Joe Shirley, Esquire
Office of Tennessee Attorney General
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Nashville, TN 37202
Joe.shirley@state.tn.us

A handwritten signature in black ink, appearing to read "Joe Shirley", is written over a horizontal line.